

SB 3. Expanding Promotions and Optional Telecommunications Services

Senate Natural Resources and Energy Committee

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I want to thank Senator Essmann for introducing SB 3 and the Chairman and members of this committee for holding today's hearing.

You'll hear from opponents today about monopoly pricing and the ugly "D" word: deregulation. These allegations, in my opinion, serve only to distract you from what this bill actually does, and perhaps more importantly, what it does NOT do.

First, as Sen. Essmann pointed out, we're talking about SB 3 as amended, not as introduced. We've shared these amendments with the Public Service Commission and other interested parties. You have a gray bill handed out that includes the amended language that I'd like the committee to focus on. Yet, you may hear comments continuing to criticize SB 3 as introduced, not as amended.

As introduced, SB 3 was a bill only its mother could love. Indeed, MTA opposed SB 3 as introduced. But we have always concurred with the intent of the bill: to maintain regulation over essential telecommunications services, while allowing optional services to be offered on a par with competitive alternatives in the marketplace. That's why we undertook to work with Qwest to amend the bill significantly.

Also as Sen. Essmann alluded, if someone else has a better way to draft language that accomplishes the bill's intent, we're entirely in support of offering such language.

Further, as Sen. Essmann mentioned, consumers in Montana have choices among telecommunications providers.

We are faced today with a regulatory Catch 22. The PSC will say there are "mechanisms" by which regulated telecommunications carriers can offer services on a non-regulated basis. In other words, we can offer services as deregulated, but only after slogging through a regulatory proceeding to determine which services if any, may, or may not, be considered not regulated. The opinion of regulators is that ALL telecommunication service is regulated, including services that have market alternatives, or services that haven't even been invented yet. (And once again, remember that the only telecommunications services regulated in Montana are those provided by a few regulated telecommunication service providers—a subset of a subset of telecommunications service providers. Cable providers offering voice services are not regulated. Wireless carriers are not

regulated. Nor are satellite, Internet Voice providers like Vonage, nor ANY other provider of communications services in Montana regulated by the PSC.)

Montana law itself already clearly distinguishes between regulated and non-regulated service. First, the definition of regulated telecommunication service is limited to "two-way switched voice-grade access and transport of communications." Second, Montana Code (69-3-806) also prohibits regulated telecommunications carriers from cross subsidizing regulated and non-regulated telecommunications services. In other words, the law recognizes that there are regulated and non-regulated services, and revenues or expenses associated with one category cannot be used to subsidize services from the other category. So, all services in fact are NOT regulated. Yet, under current practice—not law—regulated telecommunications service providers must operate under the premise that all services are regulated until and unless the Commission determines that they are not. The Commission will use such undefined terms as "effective" competition, or "workable" competition to justify its perception that all services are regulated.

You'll hear about monopoly pricing, too. But opponents appear to be more concerned about price increases, not price decreases. However, telecommunications companies in today's market cannot increase prices, as any number of competitive alternatives are standing by ready to take advantage of any pricing opportunity that comes along. In fact, prices for telecom services have lagged behind the CPI, and not surprisingly, where there's competition, prices have increased even less, or even decreased.

So let's review what SB 3, **AS AMENDED**, does and, importantly, does not do.

First, Section 1 would remove PSC prior approval of telecommunications service promotions. The Qwest/MTA amendments conform this language exactly to language drafted by the PSC. Thus, regulated telecommunications carriers may offer promotions without prior Commission approval; but the Commission retains jurisdiction over establishing rules that determine how promotions can be offered in general. The Commission also can adjudicate complaints and exercise other regulatory jurisdiction that is in current law. (Sec. 2 is eliminated in the amended version to conform exactly to Commission-drafted language; and the rest of the sections in SB 3, as amended, are renumbered.)

Second, SB 3 (in renumbered section 2) adds a provision to the definition of "incumbent local exchange carrier" to conform to federal law. The current definition in Montana Code mirrors the Telecommunications Act of 1996, which allows the FCC to designate new incumbent carriers. Montana law does not recognize incumbent carriers designated since 1996; and SB 3 corrects this oversight in a non-controversial "technical" amendment to current law.

Third, SB 3 (as amended in renumbered Sec. 2) keeps the existing definition of "regulated telecommunications service" (in subsection (10a), renumbered (11a)) and adds the term "optional service" in (10b) (renumbered (11b)) to the list of exceptions. Note: this is where cable and wireless services are specifically exempted from regulation in Montana.

Fourth, SB 3, as amended, establishes a definition of "optional services." This definition uses the federal communications commission (FCC) list of services that are determined essential services required to be provided by any telecommunications carrier eligible to receive federal universal service support. In fact, SB 3 adds an additional essential service to the list: i.e., telephone relay services. In opposing SB 3's predecessor language, the PSC indicated that SB 3, before amendment, might be interpreted as having deregulated many of these services. Thus, the amendment addresses these specific concerns. And as noted earlier, we welcome any language that better defines regulated and optional telecommunications services.

I should point out that the language in the Qwest/MTA amendments is not unique to SB 3, or Montana. In fact, I researched more than a dozen statutes across the country from other states that have deregulated telecommunications services either entirely or partially. States like California, Idaho, Iowa, Indiana, Michigan, Mississippi, South Dakota, Utah, and others. There were many common elements among these state statutes, including the concept of basic and optional services. The definition of "optional service" in SB 3 is not some arbitrary concept.

Finally, the bill (as amended, in renumbered Sec. 3) adds a provision at the end of 69-3-807—regulation of rates—to make sure that a package of services that include both regulated and optional services cannot be priced above the price of a la carte services nor below the price of the basic regulated service. This provision actually strengthens current law prohibitions against monopoly pricing. It goes further than current law, because it states that the price of a package cannot be below the price—not the lower *cost*—of the basic regulated service. So if the price of basic telephone service is \$20 for example, a rate determined by the PSC, then the price of a bundle of services, say basic service plus call forwarding, speed dialing, distinctive ringing, etc., cannot be less than \$20. In this scenario, consumers would benefit from free optional services. Although shareholders might question offering services for free, it's not likely something that consumers would object to. This subsection also says that if call forwarding, speed dialing, and the like are offered for say \$5 on a stand alone basis, then the price of a package containing these optional services along with the basic \$20 service cannot be higher than \$25. For some reason, this is what that PSC appears to be most concerned about: that companies will offer packages of services at rates that are higher than their piece parts. If that really is a concern, we're willing to offer language that further clarifies that prices won't be increased as the result of some perceived lack of competitive pricing market factors.

In conclusion, SB 3 **as amended** offers a win/win situation to Montana's telecommunications consumers and providers alike. Consumers are protected by the preservation and enhancement of regulated telecommunication services and rates in Montana. Further, they benefit from the introduction of additional incentives and competitive alternatives of optional services from which to choose. Telecommunications carriers also benefit from regulatory certainty. They know which services are regulated as essential telecommunications services, while they are free to develop competitive optional services for the market to purchase, or not, in accordance to market—not regulatory—preferences.

The question, therefore, for this committee to answer is whether all telecommunications services—offered only by a subset of telecommunications service providers—should be regulated, or whether *basic* telecommunications service should remain regulated while *optional* services are allowed to compete on a par with other services and service providers who remain completely unregulated in Montana.

I hope you'll concur that this bill protects consumers while offering them a more competitive marketplace from which to build their telecommunications service portfolios.

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